

REMARKS

Reconsideration of the above-identified patent application in view of the amendment above and the remarks below is respectfully requested.

Claims 1 and 5 have been canceled in this paper. Claims 2, 6, 8, 10, 12 and 13 have been amended in this paper. No new claims have been added in this paper. Therefore, claims 2-4 and 6-19 are pending and are under active consideration.

Claims 1-5, 8, 13 and 14 stand rejected under 35 U.S.C. 102(b) “as being clearly anticipated by U.S. Patent No. 1,409,177 to Holman.”

Insofar as the foregoing rejection pertains to claims 1 and 5, the rejection is moot in view of Applicants’ cancellation herein of claims 1 and 5. Insofar as the foregoing rejection pertains to claims 2-4, 8, 13 and 14, Applicants respectfully traverse the foregoing rejection. Claim 2, from which claims 3-4 depend, has been amended herein to include the limitations of canceled claim 5 and now recites “[a] device for externally retaining a medical tube against a patient, said medical tube having a distal portion and a proximal portion, said distal portion being disposed within the patient and terminating in a distal end, said proximal portion extending externally from the patient and terminating in a proximal end, said device comprising a clip wherein said clip comprises:

(a) a first end wall, said first end wall having a top surface, a bottom surface and a bore, said bore extending from said top surface to said bottom surface, said bore being dimensioned to receive a length of the proximal portion of the medical tube therethrough;

(b) a second end wall spaced apart from said first end wall;

(c) a lower wall interconnecting said first end wall and said second end wall; and

(d) an upper wall connected at a first end to said first end wall;

(e) wherein said first end wall, said second end wall, said lower wall and said upper wall together define a tubing storage cavity, with the remainder of the proximal portion of the medical tube being held in a looped back configuration by said tubing storage cavity and wherein said upper wall further has a second end opposite to said first end, said second end being spaced apart from said second end wall so as to define a tubing inlet therebetween through which the medical tubing may be inserted into said tubing storage cavity.”

Thus amended, claim 2 is neither anticipated by nor rendered obvious over Holman for at least the reason that Holman does not teach or suggest a device that comprises, among other things, a clip comprising a pair of end walls, an upper wall, a lower wall and a pair of open sides, wherein said upper wall has a first end connected to said first end wall and a second end spaced apart from said second end wall to define a tubing inlet. Instead, Holman discloses a spudding shoe that comprises a cheek D having a first end connected to a head A and a second end having a flange 4 engageable with a rib 5 on a shank C. There is no space between the second end of head A and shank C.

Claim 8, which has been rewritten herein in independent form, is neither anticipated by nor rendered obvious over Holman for at least the reason that Holman does not teach or suggest a device comprising, among other things, a clip and a base, the base being adapted to be mounted on a patient, the clip being mounted on the base. There is simply no structure in Holman corresponding to the claimed base.

Claim 13, which has been rewritten herein in independent form and from which claim 14 depends, is neither anticipated by nor rendered obvious over Holman for at least the reason that Holman does not teach or suggest a clip comprising, among other things, a first end wall having a

bore and a second end wall having a top surface shaped to define an elongated groove adapted to receive the proximal end of a medical tube. Instead, Holman discloses a spudding shoe comprising a shank C and a head A. Shank C has a bore 2, but head A has no structure on its top surface corresponding to the recited elongated groove.

Accordingly, for at least the above reasons, the foregoing rejection should be withdrawn.

Claims 10 and 11 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over Holman.” In support of the rejection, the Patent Office states the following:

Holman discloses the claimed invention except for showing that the upper wall is pivotally connected to the first end wall and that the upper wall and the second wall are adapted to releasably engage one another. It would have been obvious to one of ordinary skill in the art to modify Holman by having the upper wall pivotally connected to the first end wall (instead of the second end wall) and that the upper wall and the second wall are adapted to releasably engage one another since it has been held that such rearrangement of parts is an obvious matter of design choice that doesn’t affect the operation of the device. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950); *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

Applicants respectfully traverse the foregoing rejection. Claim 10, from which claim 11 depends, has been amended herein and now recites “[a] device for externally retaining a medical tube against a patient, said medical tube having a distal portion and a proximal portion, said distal portion being disposed within the patient and terminating in a distal end, said proximal portion extending externally from the patient and terminating in a proximal end, said device comprising a clip wherein said clip comprises:

(a) a first end wall, said first end wall having a top surface, a bottom surface and a bore, said bore extending from said top surface to said bottom surface, said bore being dimensioned to receive a length of the proximal portion of the medical tube therethrough;

(b) a second end wall spaced apart from said first end wall;

(c) a lower wall interconnecting said first end wall and said second end wall; and

(d) an upper wall connected at a first end to said first end wall, wherein said upper wall is pivotally connected to said first end wall for vertical movement and wherein said first end wall, said second end wall, said lower wall and said upper wall together define a tubing storage cavity, with the remainder of the proximal portion of the medical tube being held in a looped back configuration by said tubing storage cavity.”

Thus amended, claim 10 is not rendered obvious over Holman for at least the reason that Holman fails to teach or to suggest a clip comprising, among other things, an upper wall and a first end wall wherein said upper wall is pivotally connected to said first end wall for vertical movement. Instead, Holman discloses a spudding shoe wherein a cheek D is pivotally mounted to a head A for lateral, as opposed to vertical, movement. Applicants also respectfully disagree with the Patent Office’s assertion that it would have been obvious to modify Holman as suggested as there would have been no motivation for one of ordinary skill in the art to have made such a modification.

Accordingly, for at least the above reasons, the foregoing rejection should be withdrawn.

Claims 6, 7, 9 and 12 stand objected to “as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.”

In response to the foregoing objection, Applicants have rewritten claims 6 and 12 in independent form. Because claim 7 depends from claim 6, it is not believed necessary for claim 7 also to be rewritten in independent form. Claim 9 depends from claim 8. Because claim 8 is

believed to be allowable for at least the reasons given above, it is not believed necessary for claim 9 also to be rewritten in independent form.

Accordingly, for at least the above reasons, the foregoing objection should be withdrawn.

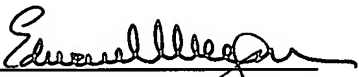
Claims 15-19 have been allowed.

In conclusion, it is respectfully submitted that the present application is now in condition for allowance. Prompt and favorable action is earnestly solicited.

If there are any fees due in connection with the filing of this paper that are not accounted for, the Examiner is authorized to charge the fees to our Deposit Account No. 11-1755. If a fee is required for an extension of time under 37 C.F.R. 1.136 that is not accounted for already, such an extension of time is requested and the fee should also be charged to our Deposit Account.

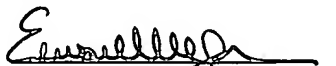
Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 18, 2004.


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